IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 195 OF 2005

M/s. P. Sons (India)
Prop. Shri Nandalal Radhamal Chawala,
(since deceased by his L.R.s.)
1A. Smt. Bhagwani Nandalal Chawala
& ors. ... Appellants

V/s

Kolhapur Municipal Corporation. ... Respondent

Mr. A.M. Kulkarni for the appellants.

Mr. S.S. Patwardhan for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 26TH JULY, 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by the Addl. District Judge, Kolhapur, dated 16.9.2004 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Jr.Divn., Kolhapur, dated 27.11.1996 dismissing the plaintiff's suit.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiff filed the suit for declaration and perpetual injunction against the defendant Kolhapur Municipaql Corporation. The plaintiff is in possession of the suit property i.e. shop premises owned by the defendant Corporation on tenancy basis at the monthly rent of Rs.942/- for 30 years since 8.6.1983 and doing the business of cloth. The defendant issued notices dated 18.12.1990, 15.3.1993 and 19.5.1996 calling upon the plaintiff to pay the rent at the rate of Rs.2,189/- and hence the plaintiff filed the present suit on the ground that such increase in the rent was arbitrary, illegal and sought restrainment on recovery of rent.

4. The defendant contested the suit on various grounds inter-alia submitting that the increase of rent was made after due process of law and, therefore, plaintiff’s suit was liable to be dismissed.

5. The learned Trial Judge, after hearing both parties on available evidence came to the conclusion that the plaintiff was not liable for decree of declaration as well as injunction as prayed for and, as such, the suit came to be dismissed.

The appeal was carried to the District Court. The learned Addl. District Judge, after hearing both parties found that the reasoning adopted and findings recorded by the Trial Court were legal and proper and, therefore, dismissed the appeal. Hence the present appeal.

6. At the outset, it may be noted that there is no substantial question of law involved in this appeal. The learned counsel for the appellant submitted that in two similar suits the impugned resolution of the defendant Corporation was struck down as arbitrary and illegal and, therefore, it was on the similar set of facts involved in this suit and, therefore, both the Courts below held that resolution was illegal and arbitrary and was required to be struck down by the said Courts. In my considered view, by no stretch of imagination the findings recorded by the Civil Court in other suits would be binding upon the other Court adjudicating the dispute at hand even though the similar facts were involved. Moreover, in the present case, it is seen that the impugned resolution itself is not filed on record by the appellant-plaintiff. Moreover, it is also apparent from the record that, due notice was given by the defendant Corporation and hence all the shop

owners as well as other officers held meeting and intially the rent was sought to be assessed at the rate of Rs.2189/- but it was reduced to Rs.1,674/- in the case of the present appellant. The lower appellate Court Judge has also recorded that the appellant-plaintiff also admitted that he had no knowledge whether the rent was increased of other shops or not. Be that as it may, the fact remains, as can be seen from the record, that the action on the part of the defendant Corporation cannot be said to be malafide. Moreover, the view taken in different suits involving the same resolution on similar facts cannot be held to be binding upon the Civil Court in this case especially when it is seen that the resolution was pertaining to the shop premises spread all over city of Kolhapur and, therefore, it cannot be said that the rent increased in one part of the area could be made applicable to the shops located in other parts of the area. Moreover, in this particular case, it is nowhere seen that the action of the defendant Corporation was either arbitrary or illegal and the concurrent findings recorded by both the Courts below on this issue of fact cannot be interfered with on inadequate record.

7. Under the circumstances, the appeal has no merits

and stands dismissed with no order as to costs. Civil Application No. 412 of 2005 also stands dismissed with no order as to costs.

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